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# Making Refugees (Dis)Appear: Identifying Refugees and Asylum Seekers in Thailand and Malaysia<sup>1</sup>

Jera Lego

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Thailand and Malaysia together host hundreds of thousands of refugees and asylum seekers even while neither of the two countries has signed international refugee conventions and there exist little or no formal national asylum frameworks for distinguishing refugees and asylum seekers from other undocumented migrants. Scholars who have explored this situation and the precarious condition of refugees and asylum seekers have yet to question how refugees and asylum seekers are identified in light of this legal ambiguity. This paper follows the cases of registration exercises along the Thai-Myanmar border and mobile registration in Kuala Lumpur until around 2013 in order to explore the mechanisms and technologies employed by the Office of the United Nations High Commissioner for Refugees in cooperation with non-governmental organizations for registering and identifying refugees from Myanmar. It argues that both the registration and non-registration of refugees and asylum seekers can be understood in terms of competing rationalities of the various actors involved, their incongruent programs, and uneven technologies that serve to make refugees both appear and disappear, that is, to actively construct and assert knowledge and information concerning the existence of refugees, or to conceal, deny, if not altogether dispense of the presence of refugees.

**Keywords:** Governmentality; Malaysia; Refugee; Refugee Status Determination; Thailand

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## INTRODUCTION

Many Southeast Asian countries have long been producing, receiving, and serving as transit points for forced migrants without the benefit of national asylum frameworks. Between 1975 and 1995, some three million refugees and asylum seekers fled Cambodia, Laos, and Vietnam in what came to be known as the Indochinese refugee crisis. Since the early 1980s, various ethnic minorities from Myanmar have also been fleeing to its neighboring countries. At the height of the influx of forced migrants from Myanmar, Malaysia was host to more than 270,000 so-called persons of concern<sup>2</sup> to the United Nations High Commissioner

1 This paper is based on a PhD dissertation entitled *Constructing the Refugee Category: Sovereignty, Ambiguity, and Governmentality*, submitted to the International Christian University in Tokyo, Japan, in 2016. It uses data gathered from interviews with UNHCR staff, non-governmental organizations, refugees, and refugee community leaders in Bangkok and Mae Sot in Thailand in 2013, and in Kuala Lumpur, Malaysia, in 2010 and 2013.

2 This includes refugees, persons living in refugee-like situations, asylum seekers, stateless persons,

for Refugees (UNHCR) in 2014, while The Border Consortium (TBC) recorded more than 153,000 refugees and asylum seekers living in the nine camps along the Thai-Myanmar border in 2006 (The Border Consortium, 2007). Despite the large presence of refugees and asylum seekers, neither Thailand nor Malaysia has signed the 1951 Convention Relating to the Status of Refugees nor its 1967 Protocol, and there exists no formal national asylum frameworks for distinguishing refugees and asylum seekers from other undocumented migrants. That these refugees and asylum seekers live precarious lives has not gone unnoticed (Amnesty International, 2010; Human Rights Watch [HRW], 2012; International Federation for Human Rights & Suara Rakyat Malaysia, 2008; Jesuit Refugee Services, 2012; United States Committee for Refugees and Immigrants, 2006).

Scholars have explored this situation and characterized the condition of refugees and asylum seekers as one occupying “an indeterminate space, an unsettled socio-legal location” (Nah, 2007, p. 56) in which the operation of borders remains unclear. Others have commented on how governmental responses towards refugees and asylum seekers serve to perform and reify states and borders (Hedman, 2008). Such literature, however, has yet to specifically question how refugees are identified when no national asylum framework exists in the first place. Roger Zetter’s (1991) influential article considers how the refugee label is formed, transformed, and politicized in the case of Greek-Cypriot refugees. His analysis, however, focuses on the labeling of refugees in contexts where formal legal frameworks exist and where refugee norms are institutionalized. Crisp’s (1999) working paper entitled “Who Has Counted the Refugees?” is highly informative and suggests various factors involved in registering displaced persons and in collecting statistics concerning these populations. He finds, for instance, that logistical problems matter in the decision whether or not to individually register refugees, that states for various reasons may try to inflate or deflate refugee figures, or that at times registration is resisted by refugees themselves, state actors, or even the UNHCR’s operational partners. The situation in Southeast Asia since the 1980s is absent from Crisp’s (1999) account, and he does not attempt to relate his findings to a more generalized understanding of the state, international organizations (IOs), and other actors involved in the regimes of governing forced migration.

This paper aims to fill these gaps by exploring efforts to register and thereby identify refugees and asylum seekers in cases where formal national asylum frameworks are absent. Why does it matter how refugees are identified? First, it matters from the perspective of the rights of forced migrants. Registration as an asylum seeker serves as the starting point for gaining recognition as a refugee and all the rights that accrue to it under international law. Second, it matters for understanding the process of norm creation and of constructing the refugee category. How refugees are identified in the absence of national asylum frameworks could reveal the strategies employed by the various actors involved, the effectiveness of those strategies, and the possibilities for strengthening and internalizing refugee norms in host countries. Since, by definition, the refugee category exists in relation to states and the international system of nation-states (Haddad, 2008), practices that contribute to creating it promise to reveal insights into the exercise and practice of state sovereignty and international

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and other uncategorized groups described simply as “others of concern to the UNHCR” (UNHCR, 2015).

politics, and of state sovereignty within international politics. Third, and related to this, it matters for revealing the complex dynamics between the state, the UNHCR, non-government organizations (NGOs), and forced migrants.

This paper focuses on the second and third reasons and aims to shed more light on the dynamics between Southeast Asian states, the UNHCR, NGOs, and forced migrants. Southeast Asian states have been accused of rejecting refugee norms as Eurocentric and unsuited to the Southeast Asian context (Davies, 2008), or of being preoccupied with sovereignty and economic development at the expense of protecting human rights (McConnachie, 2014). On the other hand, the UNHCR is seen as one of the “gold standards” in the so-called international humanitarian order (Barnett, 2010), an epistemic resource and norm entrepreneur, albeit with its own pathologies (Barnett & Finnemore, 2004), whose practice of conducting refugee status determination (RSD) procedures is inherently problematic (Kagan, 2006). Caught between Southeast Asian state authorities, the UNHCR, and the NGOs that may seek to provide material and non-material resources, care, and/or compassion are those forced migrants seen as either hapless victims or survivors with agency.

Do the governments of Southeast Asian states simply reject refugee norms as Eurocentric and irrelevant or are they merely illiberal, corrupt, and erratic in responding to refugees and asylum seekers? How does an influential IO like the UNHCR promote and implement refugee norms in relation to such states? What role do NGOs and forced migrants then play? To answer these questions, this paper takes the case of two of the largest refugee populations in Southeast Asia, namely, those in peninsular Malaysia and on the border between Thailand and Myanmar, and it examines the mechanisms for registering those populations until around 2013. The two cases serve an interesting contrast between largely urban-based refugees, in the case of Malaysia, and a protracted refugee situation in a non-urban area, in the case of the Thailand's border.

### APPROACHING THE ABSENCE OF NATIONAL LAWS

In the absence of national asylum laws, it is necessary to use a framework that elaborates on the ways that power is articulated through other mechanisms and practices. Here, governmentality, a way of examining collective activities and organized practices as deliberate schemes through which subjects are governed or rendered governable (Dean, 1999), is instructive. Lippert (2005) distinguishes between three concepts deployed when using a governmentality approach: technologies, programs, and rationalities. Technologies are “the material and intellectual means, devices, and mechanisms that make different forms of rule possible” (Lippert, 2005, p. 4). Programs are those “imagined projects, designs or schemes for organizing and administering social conduct” (Lippert, 2005, p. 4) within which various technologies are assembled. Rationalities include, but are not limited to, moralities, ideologies, “notions of the appropriate forms, objects, and limits of politics, and the right distribution of governing duties within secular, religious, military, and familial sectors” (Lippert, 2005, p. 4). Organized practices that tend to be taken for granted therefore become clues to understanding larger programs of governance borne of particular mentalities or rationalities of rule.

Rationalities, moreover, differ greatly depending on what Michel Foucault (2007) refers to as mechanisms of power. Mechanisms of power may be pastoral, sovereign, governmental, or disciplinary, each of which is underpinned by different rationalities that constitute their subjects in different ways. The sovereign conceives of its subjects in territorial terms, the governmental in terms of populations, the pastoral in terms of the life or soul of the individual, and the disciplinary in terms of the bodies of individuals. These rationalities tend to utilize particular mechanisms of government toward different ends. Sovereign rationality is mainly expressed through the imposition of laws and the use of force, while governmental rationality deploys forms of knowledge and expertise. The sovereign, moreover, is the ultimate source of authority; it is characteristic for its capacity to determine states of exception, as Carl Schmitt (1985, p. 1) has famously written. Governmentality, on the other hand, is articulated precisely in terms of governmentalization of the state, that is to say the elaboration of bureaucratic regulations and procedures separate from the person and the activity of the sovereign (Foucault, 2007). In addition, governmentality, seeks “to structure the field of possible action, to act on our own or others’ capacities for action” (Dean, 1999, p. 14). In other words, it presumes that the individual who constitutes the population is a locus of freedom. Thus, governmentality studies are often seen as a preoccupation for understanding liberal governments where sovereign power is understood to have receded. As Dean (1999, p. 147) argues, however, liberalism itself contains elements of despotism for those who are deemed not to possess the attributes required of the autonomous and responsible subject, and that, conversely, it is also possible to think of governmentality under authoritarian forms of rule.

This paper attempts to take up this challenge, to consider governmentality under less or non-liberal forms of rule, such as in Thailand and Malaysia, and to examine the ways in which sovereign rationalities are articulated as they overlap, compete, or perhaps collaborate with other forms or modes of government in the context of identifying refugees and asylum seekers. In the same vein, the paper argues that the UNHCR can be understood as being motivated by governmental rationalities, and NGOs, including aid agencies and refugee community organizations (RCOs), as being guided by pastoral rationalities. IOs and NGOs are therefore understood as sources of governance imbued with radically different rationalities underpinning their respective programs and mechanisms for implementing these programs.

At this point, we may already begin to address some of the questions raised in the previous section. For one, it can be argued that disregard for human rights and refugee norms does not have to come at the expense of a preoccupation with sovereignty, nor does a more liberal form of rule guarantee the protection of human rights, as the surge of xenophobic, populist politics in Western democracies in recent years has shown. Liberal governmentality contains elements of despotism, as mentioned earlier, while sovereign power’s exceptionalist tendencies to assert itself can exist alongside particular forms of governmental rule. Meanwhile, IOs exhibiting ‘pathologies’ is not surprising given governmentality’s tendency to homogenize populations, which runs counter to the underlying principle of refugee norms that must take into consideration the multiple and complex circumstances refugees and asylum seekers face.

On this premise, this paper argues that efforts to register and/or cease registration of refugees and asylum seekers can be understood as an outcome of competing

rationalities of the various actors involved, their incongruent programs, and uneven technologies that seek to make refugees both appear and disappear. The Thai and Malaysian states, the UNHCR, and its partner NGOs are each animated by sovereign, governmental, or pastoral rationalities that shape the various programs for governing refugees, constituted as either populations or communities through different mechanisms. These programs then serve to make refugees appear, in the sense of being made visible on official records or in the public discourse, or disappear, in the double sense of having them leave the territory through resettlement and (sometimes forcible) repatriation, or of limiting the numbers of those visible on official records. The identification of refugees thus serves as a rich site for understanding multiple forms of governmental rationalities. The use of the terms appear/disappear rather than visible/invisible is deliberate as the latter suggests that something that exists is hidden from plain sight. Instead, appearance/disappearance indicate the need, on the one hand, to actively construct and assert knowledge and information concerning the existence of refugees or, on the other hand, conceal, deny, if not altogether dispense of the presence of refugees within a given territory.

### REGISTRATION IN MALAYSIA

Malaysia has seen its fair share of refugees and asylum seekers: from Filipino Muslims fleeing into Sabah in the 1970s, to the so-called Vietnamese ‘boat people’ and Cambodian Cham Muslims during what came to be known as the Indochinese refugee crisis, to Thai Muslims who had fled into Kedah and Perak in the 1980s, to Bosnian Muslims in the early 1990s, and Indochinese as well as Acehnese fleeing throughout the 1990s and into the mid-2000s. Temporary residence permits were granted to some of these groups on the basis of exemption from provisions of the Immigration Act granted at the discretion of the Minister of Home Affairs. In most cases, these permits were granted on humanitarian grounds, serving as “humanitarian exceptions”, which simultaneously appropriate for the Malaysian state a noble role while distancing itself from the language of rights and any obligation it invokes (Lego, 2012). Apart from these, there are no national asylum frameworks that provide protection for refugees as understood in international law.

Except during the Indochinese refugee crisis, under the 1989 Comprehensive Plan of Action (CPA), registration and RSD conducted by the UNHCR in Malaysia has been ad hoc and irregular, at least until the early 2000s. Alice Nah (2007) argues that an incident involving high profile arrests of over 400 Acehnese asylum seekers outside the UNHCR compound in Kuala Lumpur in 2003 was a highly symbolic event that reinforced an internal change in the UNHCR. Since that event, and under a new representative, Volker Turk, UNHCR-Malaysia was

restructured and repositioned, increasing its capacity to fulfill its mandate of protection and assistance. From having previously adopted a relatively meek and submissive role, it began to engage proactively with the Malaysian government, with civil society groups, and with the media on the issue of protection. Operationally, it increased and amended its registration and RSD processes. It also defended the identity documents it produced by intervening when registered persons of concern were arrested. It made appeals for their release, ar-

ranged for legal representation in court, organized medical services for those in detention, and processed more cases for resettlement. It lobbied for change through every step of the law enforcement system. (Nah, 2007, p. 49)

It also happens that these enhanced operations occurred, as Nah (2007) pointed out, at the same time that the Malaysian government had begun to more strictly regulate immigration flows in response to the growing number of undocumented migrant workers arriving since the 1980s, when the Malaysian economy experienced rapid economic growth. The Malaysian government enacted harsher immigration laws allowing for fines of up to 10,000 MYR (roughly 2,000 USD), imprisonment of up to five years, corporal punishment, frequent immigration crackdowns, and broader police powers.

It could thus be argued the UNHCR was prompted to elaborate and enhance its mechanisms to more effectively implement its programs for managing refugee populations in response to the state's actions to assert its sovereignty and enforce its borders by criminalizing those who may be seeking asylum. The arrests were particularly galling for the UNHCR because not only were they an excessive show of sovereignty that disregards international refugee norms, they also very blatantly preempted the possibility that the UNHCR could register and then determine whether those asylum seekers could be recognized as refugees. In other words, those actions prevented the possibility of making those 400 arrested Acehnese appear as either refugees or not.

### Mobile Registration

One innovation, developed by the UNHCR as early as 2004 as part of its efforts to enhance its mechanisms, was the implementation of mobile registration exercises in which UNHCR staff would head to refugee settlements in jungle areas to seek out and register refugees and asylum seekers. Informants narrated how the UNHCR would typically inform RCOs when and where these mobile registration exercises would be held. In the beginning, these were held in so-called jungle settlements, but later on, they were also held in urban areas, often in church facilities. The UNHCR then headed to these locations, where they gathered and recorded information from those with asylum claims. One of the first groups to be registered under these mobile registration exercises was a group of 600 refugees from Aceh seeking refuge in western Malaysia's Penang Island (UNHCR Malaysia, 2004). Since then, several other mobile registration exercises were implemented on an ad hoc basis. Between 2008 and 2010, with funding from the Australian government, the UNHCR in Malaysia was able to register some 75,000 asylum seekers (Crisp, Obi, & Umlas, 2012).

The Chin Refugee Committee (CRC), one of many RCOs, considered these mobile registration exercises to be extremely beneficial. The CRC Annual Report narrates how, prior to mobile registration exercises, refugees and asylum seekers had been seeking refuge in jungles. There, they would set up tents or small huts in groups of 100 to 300 people in each camp for fear of raids conducted by the *Ikatan Relawan Rakyat* (RELA)<sup>3</sup>, immigration officers, and police forces in urban areas. Since the mass mobile

3 RELA (People's Volunteer Corps) is a civilian volunteer group established in 1972 under the Emergency (Essential Powers) Act of 1964 to "help maintain security in the country and the well-being of its people" (GoM1964 Emergency [Essential Powers] Act, cited in Hedman, 2008, p. 375). It has been criticized for



registration exercises conducted by the UNHCR in early 2009, many of those refugees left their settlements in the jungles and moved to urban areas where they felt safer. Nevertheless, some jungle camps still remained in some areas, such as the Cameron Highlands in Pahang State, as of 2012 (Chin Refugee Committee, 2012, p. 31).

A blog by the RCO known as the Voice of Chin Refugees (VOCR), announcing one such mobile registration, offers revealing insights on the nature of these exercises (see Figure 1). For one, the UNHCR's mobile registration exercises gather detailed and regularized information, such as dates of birth, parents' names, date of arrival in Malaysia (point #3), and only one particular place of registration where they must remain with the knowledge of local community leaders (point #4). Asylum applicants must be able to provide documented asylum application statements, otherwise the UNHCR will not accept their application (point #5). The guidelines also reveal that asylum seekers are not guaranteed protection from arrest by virtue of having lodged an asylum application. Asylum applicants are warned that Malaysian state authorities may disregard refugee norms by arresting and detaining them. The UNHCR promises not to provide protection in the event of an arrest if the asylum applicant arrested had failed to follow certain guidelines (point #1). Finally, restrictions apply to asylum for extended family members (points #6 & 7).

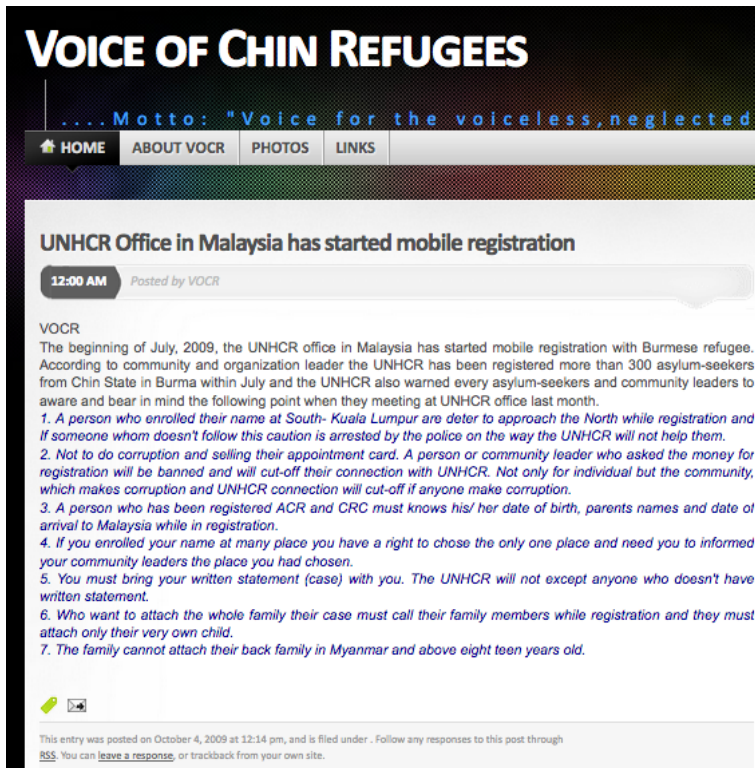


Figure 1. Announcement of mobile registration exercise to be conducted by the UNHCR. (screenshot by the author; VOCR Blog, 2018).

harsh immigration crackdowns, arbitrary detention, and other abuses.



This announcement by an RCO interestingly reveals the UNHCR's governmental compulsion to rationalize information on refugee populations, which in turn underpins a program for fixing these populations to particular places. This can be problematic given that mobility is often a survival strategy for refugees and documentation is not readily available due to their circumstances. RCOs serve as the conduit for the distribution of information as well as for monitoring any changes in the data gathered from refugees and asylum seekers. The extent of the UNHCR's governmental power is revealed in its capacity to withhold protection and assistance depending on an asylum seeker's ability to conform to their guidelines. Dependence on RCOs, however, could also pose some problems. According to some NGO workers, the UNHCR learns about the presence and location of asylum seekers in the country through RCOs. Not all refugee groups, however, are as close-knit and organized as others. For example, most of my informants from various NGOs were unanimous that the Rohingya are the least organized among the refugees originating from Myanmar. Nor did Sri Lankans and Afghans have the kind of community organizations that many of the ethnic groups from Myanmar had at the time of the interviews<sup>4</sup>.

### **Regular Registration and Refugee Status Determination (RSD)**

Asylum seekers who know about the UNHCR and who have the means make the trip to the UNHCR's Kuala Lumpur office, even though they run the risk of being stopped by the authorities along the way. There, they register with the UNHCR and the long process of applying for refugee status ensues. Elsewhere, I have documented the different steps that asylum seekers had to go through as of 2010 (Lego, 2012). Upon registering with the UNHCR office in Kuala Lumpur, asylum seekers typically received a so-called 'under consideration' (UC) card as proof that they were persons of concern. Then, they would undergo RSD interviews in which a UNHCR officer carefully examines an asylum seeker's account, cross checks this with information about the country of origin, and makes an assessment of the credibility of the asylum claim. Getting an appointment for RSD took anywhere between three months to a year, except in cases of extreme vulnerability, such as in the case of an unaccompanied minor, for whom an appointment could be made within a month. RSD interviews lasted between half a day and more than a day. Asylum applicants may have to return several times for an RSD interview. The entire process from registration to receiving the results of RSD took anywhere from one to three years.

Difficulties at each stage are rife. Crisp (2010) warns that the difficulties posed by proximity and access to registration could lead to a situation of "survival of the fittest", whereby refugees who have the most contact with the UNHCR are not the most vulnerable but are the most articulate, entrepreneurial, and able. Nah (2007) wrote that documents issued earlier by the UNHCR did not appear "official" enough, and authorities tended to disregard them. Laminated, tamper proof cards issued towards the end of 2004 appeared more "professional", and were more readily accepted by authorities. She adds that it was possible that by that time authorities may have gained greater awareness of the UNHCR and its function, leading to the better recognition

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4 Most of the interviews took place in August 2013.

of the new identification-card format (Nah, 2007, p. 54). While UNHCR documentation has started to afford some protection, even those who became ‘recognized’ refugees are still vulnerable to arrests, detention, corporal punishment, and deportation. As Malaysia’s national Human Rights Commission (*Suruhanjaya Hak Asasi Manusia* or SUHAKAM) admitted in its 2009 Annual Report, “refugees/asylum seekers are vulnerable to arrest even if they possess a UNHCR card” (SUHAKAM, 2009, p. 35). At that point, NGOs had become crucial as they alert the UNHCR, alert the human rights commission, and send protest letters. As an informant working for an NGO that provides health services for refugees and asylum seekers explained, they also submit names of possible persons of concern to the UNHCR when they encounter them during visits to prisons and detention centers.

The UNHCR’s governmental rationality is evident in its response to incidences of the state’s disregard for refugee norms and in its efforts to make refugee populations more legible. The UNHCR’s mobile registration exercises, in particular, served to make visible those refugees who would otherwise remain invisible in jungle settlements and urban dwellings. In addition, the UNHCR actively asserted the presence of refugees by protesting and seeking release from arbitrary arrest and detention. Also evident is the Malaysian state authorities’ sovereign compulsion to assert its prerogatives in its periodic raids, indiscriminate arrests, and detentions, which the UNHCR may or may not be able to negotiate. Finally, the pastoral function of NGOs and RCOs to know and watch over community members was also revealed when the UNHCR sought to alert communities for mobile registration exercises, in the ways that RCO leaders disseminated information about these exercises, and in the various ways that NGOs assisted in alerting the UNHCR to persons of concern in detention.

### REGISTRATION ON THE THAI-MYANMAR BORDER

Many of the areas along the border between Thailand and Burma/Myanmar had been under the control of various ethnic nationalities such as the Karen, Karenni, Kachin, Chin, Shan, and Mon. A consortium of NGOs on the border known as The Border Consortium (TBC) has been and continues to be the main provider of food, aid, and other forms of material assistance to refugees and asylum seekers. TBC’s annual reports contain a history of the populations on the border. In 1984, a major offensive by the Burmese military sent some 10,000 Karen to the Thai side of the border that have since been unable to return. As Burmese military offensives continued, the population on the border grew to some 80,000 by 1994, 115,000 in 1997, and more than 120,000 as of June 2013 (The Border Consortium, 2017). According to TBC, the first camps were established in 1984, when Thailand’s Ministry of Interior (MOI) invited a number of Bangkok-based Christian agencies (who were working with Indochinese refugees at that time) to provide emergency assistance. These agencies eventually formed a consortium and became the main provider of food and shelter. From the outset, the consortium worked with the Karen Refugee Committee (KRC) – a RCO established by Karen authorities to oversee the refugee population – and with a Karen Committee for Coordination of Services to Displaced Persons in Thailand (CCSDPT) subcommittee to coordinate response with other NGOs. The MOI likewise set policy and administered assistance programs through this subcommittee.

As the Burmese Army overran other parts of the border, the consortium extended assistance to Karenni refugees who had fled into Mae Hong Son Province through the Karenni Refugee Committee (KnRC) in 1989 and to Mon refugees in Kanchanaburi Province through the Mon National Relief Committee (MNRC) in 1990. The MOI gave formal approval for NGOs to work with these new populations in May 1991, and new guidelines were set up which confirmed previous arrangements that limited assistance to food, clothing, and medicine, and restricted agency staff to the minimum necessary. Three NGOs provided assistance under this agreement: TBC provided around 95% of food and non-food items; the Catholic Office for Emergency Relief and Refugees (COERR) provided most of the balance; and Medicines Sans Frontiers (MSF) operated as the main health agency (The Border Consortium, 2012, p. 122). As refugee numbers grew, so did the number of agencies providing services. In May 1994, the MOI extended the NGOs mandate to include sanitation and education services. New procedures were established and NGOs were required to submit formal program proposals, apply for staff border passes, and submit quarterly reports via the provincial authorities (The Border Consortium, 2012, p. 122).

It was not until the first half of 1998 that the Thai government gave the UNHCR an operational role on the border. After an exchange of letters of agreement in July 1998, the UNHCR was able to establish fully operational offices in the provinces of Mae Hong Son, Mae Sot, and Kanchanaburi by early 1999 (The Border Consortium, 2012, pp. 122-123). According to a field officer at the UNHCR in Mae Sot, the working arrangement between the UNHCR and the Royal Thai Government stated that (1) the UNHCR would be allowed access to the border, (2) their mandate would be international protection and not the provision of basic needs (a service already being met by NGOs on the border), and finally that (3) the UNHCR must seek “durable solutions” (UNHCR field officer, Mae Sot, 25 July 2013). Durable solutions, in UNHCR parlance, refers to three options: repatriation to the country of origin, resettlement in a third country, or integration into the host country. The Thai government officially denies the possibility of local integration.

### Universal Registration (1999-2005)

The first universal registration of the border population was undertaken in 1999. A mechanism called the Provincial Admissions Boards (PABs) was set up to determine the status of new asylum seekers. According to a UNHCR field officer in Mae Sot, the PAB is composed of six to seven members, including the governor of each province, the defense chief, the communication chiefs, military chiefs, representatives from the prime minister’s office, representatives from immigration, and the UNHCR. When it was first established, the PAB screened asylum seekers based on whether or not they left Burma/Myanmar “fleeing fighting and the consequences of civil war” (HRW, 2012, p. 20) – a broader definition than that contained in the 1951 UN Convention Relating to the Status of Refugees.<sup>5</sup> The 1999 exercise allowed for the registration of more than

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5 Article 1 of the 1951 Convention Relating to the Status of Refugees defines refugees as those who are unwilling or unable to avail of the protection of their country owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion (United Nations General Assembly, 1951/1967). It is a definition that emphasizes individualized

100,000 persons but was discontinued at the end of 2001, and for three years there was a “no new arrivals” policy, or in other words, no registration of newly arriving asylum seekers took place (The Border Consortium, 2005, p. 2). Registration was resumed in 2004, when another border-wide registration exercise was implemented. This time, the criteria for assessing asylum claims were extended to include those fleeing Burma/Myanmar for “political reasons” (HRW, 2012, p. 20). This resulted in the re-registration of 101,992 persons from 1999 and the identification of 34,061 others who had arrived since that time, a total of 136,053 persons (The Border Consortium, 2011, p. 6). All refugees officially registered during the 2004/2005 re-registration process, and those subsequently approved by PABs have been eligible for resettlement to third countries. As of the end of 2012, TBC had recorded 80,637 departures to third countries, 78% of which have been resettled in the US (The Border Consortium, 2012, p. 12). Universal registration by the PABs has ceased since November 2005. When asked why, the UNHCR field officer opined that Thai officials believed registration could lead to resettlement in a developed third country. They feared this would serve as a strong pull factor for asylum seekers to cross over the border and to enter the camps. He believed the Thai government was deeply frustrated that a large population of refugees and asylum seekers continued to remain on the border despite the implementation of registration and resettlement. An officer at one of the NGOs on the border agreed that the prospect of resettlement did draw asylum seekers into camps and that this influenced Thai authorities to suspend registration activities (NGO officer, Mae Sot, 24 July 2013).

### **Non-Universal Registration (2005–2013)**

While a “no new arrivals” policy has been in place since 2005, the so-called PAB fast-track has been operational for family members of those who were previously resettled, in accordance with the principle of family reunification, and for extremely vulnerable cases, such as those suffering from a serious medical condition (UNHCR field officer, Mae Sot, 25 July 2013). As of July 2013, some 1,100 individuals had been registered under fast-track PAB, and most of them had been resettled (UNHCR IT officer, Bangkok, 16 July 2013). Registration of new births to prevent statelessness was made possible under Thailand’s Civil Registration Act published in February 2008 and implemented in September 2011. UNHCR conducts birth registration activities in the various camps every month and then forwards this information along with copies of delivery certificates to Thai district authorities for them to issue birth certificates. These birth certificates serve as official records of birth but do not confer nationality to the newborn. According to an officer at TBC, since December 2012,

“Thai authorities are not allowing providing birth certificates to babies born to parents who are both unregistered. So, you can only get a birth certificate in the camps now if one of the parents is registered with the UNHCR or the Ministry of Interior” (TBC officer, 24 July 2013).

In lieu of any universal mechanism for registering new arrivals, refugee camp committees have taken it upon themselves to implement some type of screening procedure. The officer at TBC refers to it as “indigenous registration”, or “self-registration” of refugees:

Each refugee camp committee establishes a new arrivals committee. . . . They are responsible for deciding, for collecting information, and deciding whether they have the right to asylum. . . . Most people are accepted, there's very few people who are screened out, and they would be for very clear reasons, and so this new arrivals committee would then provide lists every month to TBC, say, here was the original list, these are the people we screened in, these are the people we screened out, and we would then use that to update our population statistics, demographics, and everything, but also that feeds into the whole process of ordering food for the next month so, a hundred twenty new mouths to feed. . . . UNHCR is not keeping statistics on unregistered persons. So, anyone who's entered the camp in the last eight years, about 60,000 people, are not on anyone's books. The only books that they're on are the refugee camp committee's books and our own books. (TBC officer, 24 July 2013)

It appears that the UNHCR does not approve of this self-registration conducted by refugees. The UNHCR field officer described this as illegal, saying that only the UNHCR and/or state authorities have the right to decide who gets asylum. The UNHCR seems to be of the impression that self-registration by the refugees lends itself to abuse by members of the so-called ‘new arrivals committee’ who prioritize friends and relatives over others who seek access to camps.

Finally, to monitor changes in the population, UNHCR and other authorities conduct spot checks. One officer at the UNHCR in Bangkok described how he came up with a list of persons estimated to be over 100 years old, which UNHCR field offices then used to verify whether these persons were still living (UNHCR officer, Bangkok, 16 July 2013). HRW also describes other headcount or screening activities conducted by the *Tahan Phran* (paramilitary force in charge of security outside the camps) and the *Or Sor* (volunteer corps in charge of internal camp security) under the direction of the camp commander known as the *Palad* (a deputy of the district chief under the MOI). HRW reports one case in 2008 in which the Tahan Phran entered Ban Mae Surin and Mae Ra Ma Luang camps, conducted brief interviews, and a few days later, deported dozens of refugees and asylum seekers to Ei Tu Hta camp for internally displaced persons (IDP) in Burma/Myanmar (HRW, 2012, p. 27). Other incidences of deportation have also been documented.

Thus, from the outset, provision of aid and assistance on the border was made possible through the services of NGOs, making use of preexisting RCOs, but under clear guidelines and agreements set by the Thai state authorities. These guidelines reveal that the Thai government's program for managing refugees has always been short-term, the nature of the welcome afforded to those displaced persons temporary, barring the possibility for local integration. It is also quite revealing how the UNHCR's presence has been limited – a move that arguably dissociates those persons on the border from the refugee label, thereby casting much ambiguity over whether those populations can be ‘legitimately’ considered refugees or displaced persons. The

UNHCR's governmental compulsion is once again evident in subsequent efforts to implement universal registration. Although the UNHCR has adhered to the Thai government's orders suspending universal registration, it continues to deploy alternative mechanisms, such as family reunification and consideration of vulnerable cases. Meanwhile, indigenous registration has emerged among RCOs as an effort to maintain care for their communities even as various state authorities conduct random deportations. The interplay between the pastoral, governmental, and sovereign rationalities of NGOs and RCOs, the UNHCR, and Thai state authorities are thus evident. NGOs and RCOs are the primary providers of care and compassion through personal and community networks represented by RCOs. The UNHCR has sought time and again to rationalize knowledge of refugee populations but has been restricted by Thai authorities, who prefer to minimize the number of refugees on record, whether through suspending registration, or conducting spot checks and deportations.

The situation of various ethnic groups and communities on the Thai-Burma/Myanmar border over the last three decades is vastly complex. It has as much to do with the varied histories of these communities as it does with the actions and inactions of a multiplicity of state and non-state actors. However, insofar as we can problematize the identification of refugees by looking at the continuities and discontinuities of border registration and the ambiguous figures that emerge, we can at least conclude that the state and international governmental organizations (in this case the UNHCR) are engaged in competing programs to either diminish the presence of refugees or to make it evident and legible. On the one hand, the UNHCR's governmental compulsion to gather and systematize information on refugee populations is evident, while, on the other hand, the Thai government's sovereign rationality to reify its borders, control the presence of refugees and asylum seekers, and obscure, if not minimize, their numbers can also be inferred. The UNHCR's minimal involvement with refugees from Burma/Myanmar compared to other NGOs and its discontinued and minimal registration activities all reflect the preponderance of the Thai state authorities' heightened sovereign sensibilities. Meanwhile, non-government NGOs and RCOs, motivated by pastoral rationalities, serve to fill a gaping need for social services, even giving birth to indigenous registration activities that allow these organizations to better care for refugees and asylum seekers living in the camps.

### **CONCLUSION: MAKING REFUGEES (DIS)APPEAR**

This paper has shown that in the case of both Thailand and Malaysia, the UNHCR has sought to make refugees 'appear' in the sense of making them visible, their presence known, and knowledge of them legible by gathering detailed and standardized information and by elaborating on registration and status determination procedures, even as they are restricted in their reach and resources. RCOs, with their intimate knowledge of their community members, serve to complement and fill some of these limitations faced by the UNHCR. All this is made possible by the acquiescence of the state, even as the different arms of the executive variously suspend, permit, or undermine the UNHCR's programs. What appears as erratic state behavior on the part of the Thai government in allowing and then disallowing universal registration,



can be understood in terms of an evolving ambivalence towards refugee norms and a fundamental concern for reducing the presence of refugees whether by resettlement or repatriation, whichever is more effective. The Malaysian government's apparently contradictory behavior of allowing the UNHCR to conduct RSD procedures while simultaneously enforcing immigration crackdowns can be attributed to the Malaysian state authorities' sovereign compulsion to assert its prerogatives over its migrant population without necessarily acknowledging the presence of refugees. The UNHCR is at times a vital figure able to make important interventions in an otherwise inhospitable immigration program, while, at other times, it is severely constrained and forced to discontinue its programs for registering newly arriving refugees. Asserting the presence of refugees is therefore an outcome of a struggle among competing rationalities and programs of the various stakeholders. It is a struggle that is largely tilted in favor of the state but nonetheless a struggle in which other actors are sometimes able to achieve certain objectives.

To address the questions I raised in the introduction, it is not simply that Thailand and Malaysia reject refugee norms as Eurocentric because they have, on several occasions, permitted the observance of these norms, particularly when it contributed to the objective of reducing the number of refugees on their territory. State responses to refugees can neither be reduced to a factor of illiberality nor to a factor of dysfunction. The state is inherently motivated by sovereign rationality, and it is precisely in allowing and deciding on states of exception within the ambiguous socio-legal space inhabited by refugees and asylum seekers that Thailand and Malaysia unambiguously assert this sovereignty.<sup>6</sup> The UNHCR, motivated by governmental rationality, first and foremost seeks to create and assert knowledge about refugees and asylum seekers. But since the 'refugee' construct is inextricably linked to territory and territorialized states, the UNHCR cannot implement any program without taking into consideration the states' sovereign reach. NGOs and RCOs embedded in communities and networks are sometimes able to transcend territories but are nonetheless subjected to the state's use of force.

Understanding the interplay between the state, the UNHCR, and NGOs in terms of varied rationalities serves to highlight: (1) the extent to which states, when focused on asserting their sovereign power, can disregard refugee norms, even as they interact and accommodate IOs and rights groups; (2) the importance of the UNHCR's continued functioning; and (3) the crucial role that NGOs play in supporting forced migrants given the UNHCR's tendency to homogenize refugee populations by virtue of its nature as a governmentalizing agent.<sup>7</sup> It is hoped that the UNHCR, NGOs, and RCOs are continuously empowered, and that the state is socialized not just into adopting refugee norms but also away from an excessive focus on its sovereign sensibilities. Unfortunately, this does not seem likely under the current political climate.




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6 For a discussion on how Giorgio Agamben's notion of states of exception can be conceived in terms of a 'humanitarian exception' employed by states to simultaneously adopt a noble role while distancing itself from the language of human rights, see Lego (2012).

7 Elsewhere, I have discussed in more detail the UNHCR's relationship with the Malaysian state (Lego, 2012).

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